*** HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

+WRIT APPEAL Nos.1053, 1072, 1086, 1095, 1116, 1165, 1213 and 1227 of 2005, WRIT APPEAL (SR) No.103185 of 2006
And
WRIT PETITION Nos. 6214 of 2005, 18180, 18553 and 20607 of 2006, 737 and 5329 of 2007.

% Dated 10-10-2007

Writ Appeal No.1053 of 2005 and batch

Reserve Bank of India, Central Office,
Urban Banks Departments, Mumbai & others.
… Petitioners/Appellants

VERSUS

$ Pattem Surya Prakash Rao and others. … Respondents

! Counsel for the petitioners/appellants: Sri K.G. Kannabhiran
Sri E. Manohar for
Sri S. Ashok Anand Kumar
Sri C.V. Mohan Reddy
Advocate General
Sri K.V. Bhanu Prasad
Sri P. Venugopal
Sri K. Rathangapani
Sri V. Srinivas
Sri K. Narasimha Chari
Sri D. Seshadri Naidu

^ Counsel for the respondents : Sri S. Ramchandra Rao for
Sri K.R. Prabhakar

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> HEAD NOTE:

? Cases referred

1. AIR 1962 SC 1371
2. (1992) 2 SCC 343
7. (1999) 1 SCC 759
8. (2003) 9 SCC 592

3. AIR 1958 SC 398 9. (2004) 11 SCC 213
4. AIR 1989 SC 997 10.(2006) 8 SCC 200
5. (1994) 6 SCC 651 11.2006 (8) Scale 588
6. (1997) 7 SCC 463 12.(2003) 5 SCC 437
13.2004 (6) ALD 699
14.(1980) 4 SCC 109

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
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WRIT APPEAL Nos.1053, 1072, 1086, 1095, 1116, 1165, 1213 and 1227 OF 2005, WRIT APPEAL (SR) No.103185 of 2006
And
WRIT PETITION Nos.6214 of 2005, 18180, 18553 and 20607 of 2006, 737 and 5329 of 2007

Writ Appeal No.1053 of 2005

Between:

Reserve Bank of India, Central Office,
Urban Banks Department,
Mumbai. ...Appellant

And

Pattem Surya Prakash Rao and others.
...Respondents

Counsel for the appellant : Sri K. G. Kannabhiran,
Senior Advocate with
Sri M.P. Ugle.

Counsel for respondent No.1 : Sri V. Srinivas

Counsel for respondent No.2 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent Nos.3 and 4 : Sri E. Manohar,

Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.5 : Sri S. Ramachandra Rao,
Senior Advocate, assisted by
Sri K.R. Prabhakar.

Writ Appeal No.1072 of 2005

Between:

The Prudential Co-op. Urban Bank Ltd.,
represented by its Liquidator,
Secunderabad. ...Appellant

And

Depositors' Association of Prudential Co-op.
Bank (Twin Cities), represented by its President,
Hyderabad and others.

...Respondents

Counsel for the appellants : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.1 : None.

Counsel for respondent Nos.2 and 3 : Sri C.V. Mohan Reddy,
Advocate General.

Writ Appeal No.1086 of 2005

Between:

M/s. Prudential Co-op. Bank Ltd.,
represented by its Liquidator,
Secunderabad and another. ...Appellants

And

Pattem Surya Prakash Rao and others.
...Respondents

Counsel for the appellants : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.1 : Sri V. Srinivas

Counsel for respondent No.2 : Sri K.G. Kannabhiran,
Senior Advocate with
Sri M.P. Ugle.

Counsel for respondent No.3 : Sri C.V. Mohan Reddy,
Advocate General.

Writ Appeal No.1095 of 2005

Between:

The Commissioner for Co-op. & Registrar of
Co-op. Societies, Hyderabad. ...Appellant

And

Pattem Surya Prakash Rao and others.
...Respondents

Counsel for the appellant : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent No.1 : Sri V. Srinivas

Counsel for respondent No.2 : Sri K.G. Kannabhiran,
Senior Advocate with

Sri M.P. Ugle.

Counsel for respondent Nos.3 and 4 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Appeal No.1116 of 2005

Between:

Depositors' Association of Prudential Co-op.
Bank (Twin Cities), represented by its President,
Hyderabad. ...Appellant

And

Reserve Bank of India, Central Office,
Urban Banks Department,
Mumbai and others. ...Respondents

Counsel for the appellant : Sri K.V. Bhanu Prasad.

Counsel for respondent No.1 : Sri K.G. Kannabhiran,
Senior Advocate with
Sri M.P. Ugle.

Counsel for respondent Nos.2 and 5 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent Nos.3 and 4 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Appeal No.1165 of 2005

Between:

The Government of Andhra Pradesh,
represented by its Principal Secretary,
Co-op. & Agriculture Department,
Secretariat, Hyderabad and another. ...Appellants

And

Depositors' Association of Prudential Co-op.
Bank (Twin Cities), represented by its President,
Hyderabad and others. ...Respondents

Counsel for the appellants : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent No.1 : Sri K.V. Bhanu Prasad.

Counsel for respondent No.2 and 3 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Appeal No.1213 of 2005

Between:

Reserve Bank of India, Central Office,
Urban Banks Department,
Mumbai. ...Appellant

And

Depositors' Association of Prudential Co-op.
Bank (Twin Cities), represented by its President,
Hyderabad and others. ...Respondents

Counsel for the appellant : Sri K. G. Kannabhiran,
Senior Advocate with
Sri M.P. Ugle.

Counsel for respondent No.1 : Sri K.V. Bhanu Prasad.

Counsel for respondent Nos.2 and 5 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent Nos.3 and 4 : Sri E. Manohar,

Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.6 : Sri P. Venugopal

Writ Appeal No.1227 of 2005

Between:

M/s. Hyderabad Tulaman Ltd.,
Hyderabad, represented by its
Managing Director and others. ...Appellants

And

Depositors' Association of Prudential Co-op.
Bank (Twin Cities), represented by its President,
Hyderabad and others. ...Respondents

Counsel for the appellants : Sri P. Venugopal

Counsel for respondent No.1 : Sri K.V. Bhanu Prasad.

Counsel for respondent Nos.2 and 3 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent Nos.4 and 5 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.5 : Sri S. Ramachandra Rao,
Senior Advocate, assisted by
Sri K.R. Prabhakar.

Writ Appeal (SR) No.103185 of 2006

Between:

Gopal Rao Mukim and another. …Appellants

And

The Prudential Co-op. Bank Shareholders and
Depositors' Welfare Association,
represented by its General Secretary,
Secunderabad and others.
...Respondents

Counsel for the appellants : Sri K. Rathangapani Reddy

Counsel for respondent No.1 : Sri V. Srinivas

Counsel for respondent No.2 : Sri P. Venugopal

Counsel for respondent No.3 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Petition No.6214 of 2005

Between:

The Prudential Co-op. Bank Shareholders and
Depositors' Welfare Association,
Secunderabad,
represented by its General Secretary. ...Petitioner

And

Deposit Insurance and Credit Guarantee
Corporation, Mumbai, represented by
its Managing Director and another. …
Respondents

Counsel for the petitioner : Sri V. Srinivas

Counsel for respondent No.1 : Sri P. Venugopal

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Petition No.18180 of 2006

Between:

M. Venkat Rao ...Petitioner

And

The A.P. State Cooperative Tribunal,
at Hyderabad through its Chairman
and others. …Respondents

Counsel for the petitioner : Sri K. Narasimha Chari

Counsel for respondent No.1 : None.

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent Nos.3 to 5 : None.

Writ Petition No.18553 of 2006

Between:

M. Rajasekhar ...Petitioner

And

The A.P. State Cooperative Tribunal,
at Hyderabad through its Chairman
and others. …Respondents

Counsel for the petitioner : Sri K. Narasimha Chari

Counsel for respondent No.1 : None.

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent Nos.3 to 5 : None.

Writ Petition No.20607 of 2006

Between:

B. Muralidhar ...Petitioner

And

Reserve Bank of India, Central Office,
Urban Banks Department, Mumbai
and others. …Respondents

Counsel for the petitioners : Sri V. Srinivas

Counsel for respondent No.1 : Sri K. G. Kannabhiran,
Senior Advocate with
Sri M.P. Ugle.

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Counsel for respondent No.3 : Sri C.V. Mohan Reddy,
Advocate General.

Writ Petition No.737 of 2007

Between:

The Prudential Co-op. Bank Shareholders and
Depositors' Welfare Association,
Secunderabad,
represented by its General Secretary. ...Petitioner

And

Commissioner for Co-operation and

Registrar of Co-operative Societies,
Hyderabad and another. …Respondents

Counsel for the petitioner : Sri V. Srinivas

Counsel for respondent No.1 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

Writ Petition No.5329 of 2007

Between:

G. Somasekhara Rao ...Petitioner

And

Commissioner for Co-operation and
Registrar of Co-operative Societies,
Hyderabad and another. …Respondents

Counsel for the petitioner : Sri D. Seshadri Naidu

Counsel for respondent No.1 : Sri C.V. Mohan Reddy,
Advocate General.

Counsel for respondent No.2 : Sri E. Manohar,
Senior Advocate with
Sri S. Ashok Anand Kumar.

:: **COMMON JUDGMENT** ::

10th October, 2007

Per C.V.NAGARJUNA REDDY, J.

Introduction:

This batch of 15 cases involves common issues and hence, they are disposed of by a common judgment.

Writ Appeal No.1053 of 2005 is filed by the Reserve Bank of India (for short "the RBI") against common order of the learned Single Judge in Writ Petition No.23156 of 2004. The learned Single Judge disposed of the said writ petition alongwith Writ Petition No.24346 of 2004, 2501 of 2005 and W.P.M.P.No.2333 of 2005 in Writ Petition No.23156 of 2004.

Writ Appeal No.1072 of 2005 is filed by M/s.Prudential Cooperative Bank Limited (for short 'the Bank') and the Official Liquidator against common order in Writ Petition No.2501 of 2005.

Writ Appeal No.1086 of 2005 is filed by Bank and the Official Liquidator against common order in Writ Petition No.23156 of 2004.

Writ Appeal No.1095 of 2005 is filed by the Commissioner and Registrar of Cooperative Societies (for short “the Registrar”) against the common order in Writ Petition No.23156 of 2004.

Writ Appeal No.1116 of 2005 is filed by the Depositors Association of Prudential Cooperative Bank (twin cities) (represented by its President K.Srinivasulu) against Writ Petition No.24346 of 2004, being partly aggrieved by the order of the learned single judge in not disposing of the issue relating to the validity of cancellation of licence of the Bank by the RBI.

Writ Appeal No.1165 of 2005 is filed by the Government of Andhra Pradesh and the Commissioner and Registrar of Cooperative Societies against the common order in Writ Petition No.2501 of 2005.

Writ Appeal No.1213 of 2005 is filed by the RBI against common order in Writ Petition No.24346 of 2004.

Writ Appeal No.1227 of 2005 is filed with leave against the common order in Writ Petition No.2501 of 2004 by M/s.Hyderabad Tulaman Limited and Others (borrowers).

Writ Appeal (SR) No.103185 of 2006 is filed by two individual depositors against the order of the learned Single Judge in Writ Petition No.6214 of 2005.

Writ Petition No.6214 of 2005 is filed by the Depositors Welfare Association of the Bank whereunder the petitioner inter alia sought for a direction to the Official Liquidator of the Bank not to disburse the loan amounts till it received a sum of Rs.250 Crores towards insurance from the 1st respondent therein.

W.P.M.P.No.30259 of 2005 in W.P.No.6214 of 2005 is filed by the Bank through its Liquidator to review the order dated 26.4.2005 passed in Writ Petition No.6214 of 2005.

Writ Petition No.18180 of 2006 and Writ Petition No.18553 of 2006 are filed against the interlocutory orders of the Andhra Pradesh Cooperative Tribunal, Hyderabad whereby it rejected the preliminary objections raised by the petitioners on the maintainability of the Original Petitions filed by the Bank for recovery of the loan amount. These two writ petitions are referred by the learned Single Judge to the Bench on the representation made on behalf of the petitioners that they are seeking to settle the dispute under OTS scheme, in view of the fact that the Batch of cases in which OTS scheme is one of the issues involved, is pending before the Division Bench.

Writ Petition No.20607 of 2006 is filed by two individual depositors of the Bank questioning the approval dated 10.11.2005 given by the RBI for One Time Settlement (OTS) Scheme formulated by the State of Andhra Pradesh.

Writ Petition No.737 of 2007 is filed by some of the

Depositors of the Bank questioning the OTS scheme of 2007 introduced by the State of Andhra Pradesh.

Writ petition No.5329 of 2007 is filed by an individual seeking implementation of OTS scheme 2007 framed by the Liquidator of the Bank with the approval of the Registrar.

The Background:

The Bank was registered as a Co-operative Society on 5.4.1921 and later on it was converted into a Mutually Aided Cooperative Society under the provisions of Andhra Pradesh Mutually Aided Cooperative Societies Act 1995 (for short 'the 1995 Act') on 9.4.1997. On 23.9.1998 it was granted licence to carry on banking business under Section 22 of the Banking Regulation Act 1949 (for short 'the 1949 Act'). As a part of its annual inspection, the RBI conducted its XXII statutory inspection of the books of accounts of the Bank between 2.5.2002 and 27.5.2002 with reference to the latter's financial position as on 31.3.2002. The inspection report revealed deteriorating financial position of the Bank and its violation of the various provisions of the 1949 Act and directions issued thereunder. The report also revealed the Bank's failure to repay the matured deposits. After supplying the inspection report to the Bank and noticing the further deterioration of financial position of the Bank, the RBI classified the Bank as "sick Bank". After taking certain measures such as advising the Bank to draw up an action plan etc., the RBI superseded the Board of Directors on 21.3.2003 and appointed an administrator.

After conducting its XXIII Statutory inspection of the Bank between 29.9.2003 and 31.10.2003 with reference to the Bank's financial position as on 30.6.2003, the RBI was satisfied that the Bank's financial position was precarious and its non-performing assets (NPAs) were at alarming levels. The RBI pointed out defects and communicated the same to the Bank on 30.11.2003. The compliance report dated 10.2.2004 sent by the Bank was not found to be satisfactory by the RBI. After holding its XXIV statutory inspection by the RBI with reference to the Bank's financial position as on 30.6.2004, a show cause notice dated 29.9.2004 was issued by the RBI under Section 22 of the 1949 Act. The Bank submitted its explanation dated 12.10.2004 and the RBI having not found the explanation satisfactory passed its order dated 3.12.2004 whereby it cancelled the Banks' licence. The RBI also vide its order dated 3.12.2003 requested the Commissioner and Registrar of Cooperative Societies (for short 'the Registrar') to make an order for winding up of the Bank and appointed a Liquidator in terms of Section 36-A of the 1995 Act read with Section 115-B (ii) of the Andhra Pradesh Cooperative Societies Act 1964 (for short 'the 1964 Act') and Section 13-D of Depositors Insurance and Credit Guarantee Corporation Act 1961 (for short 'the 1961 Act'). Accordingly, the Registrar vide his proceedings dated 7.12.2004 issued directions for winding up of the Bank and appointed Sri V.Amrender Rao, Joint Register/Managing Director of A.P.State Cooperative Union Limited, Hyderabad as Liquidator under the 1995 Act. The Liquidator assumed charge on 8.12.2004.

One Pattem Suryaprakash Rao, s/o.late Pattem

Venkateshwar Rao, claiming to be a shareholder of the Bank, holding shares worth Rs.3,000/- and also holding deposits to a tune of Rs.4.50 lakhs in his name and another sum of Rs.6.00 lakhs jointly with Kumari K.Amrutha, filed Writ Petition No.23156 of 2004 for a writ of mandamus to quash the proceedings dated 6.12.2004 of the RBI whereby the licence of the Bank was cancelled. He also filed W.P.M.P.No.2333 of 2005 to suspend proceedings dated 24.1.2005 issued by the Registrar appointing the Liquidator.

An association by name Depositors Welfare Association of Prudential Cooperative Bank (twin cities) through its President Sri K.Srinivasulu filed W.P.No.24346 of 2004 for a similar relief as was sought in W.P.No.23156 of 2004. The said association also filed Writ Petition No.2501 of 2005 for a writ of mandamus to quash the consequential proceedings dated 24.1.2005 issued by the Registrar, appointing Liquidator. These two writ petitions and the above mentioned W.P.M.P., were heard by the learned Single Judge and disposed of vide common order dated 5.5.2005.

The order under challenge:

The learned Single Judge in his common order impugned in this batch of writ appeals, framed the following points for consideration:

> " 1. Whether the writ petitions questioning the order of RBI cancelling the Banking Licence of the Bank, when an appeal filed under Section 22(5) of the Act is pending before the Central Government is maintainable?
> 2. Whether appointment of a Liquidator to the Bank by the RBI to wind up the Bank is not valid?
> 3. Whether the OTS scheme impugned is not valid?"

On point No.1, the learned Judge held that the writ petitions, to the extent of challenging the order of RBI cancelling the banking licence of the Bank are not maintainable in view of the filing of the appeal by the person in charge of the Bank under Section 22(4) of 1949 Act and its pendency before the Government of India. The learned Judge while so holding gave liberty to the writ petitioners to get impleaded as parties to the appeal before the Central Government and to pursue the further remedies open to them depending on the result of the appeal.

On point No.2, the learned Judge held that the RBI should not have passed an order for winding up of a Cooperative Bank simultaneously or alongwith an order cancelling licence. He also held that if at all the RBI desires that the Bank shall be wound up after cancellation of its licence, it has to issue a show cause notice to the cooperative bank concerned to enable its members to discuss among themselves on the course of action and that since no such notice was given, the order of RBI directing winding up of the bank without issuing a notice to the Bank and the consequential order passed by the Registrar without following the procedure prescribed either in the 1995 Act or in the 1964 Act are liable to be set aside and accordingly they were set aside.

On point No.3, the learned Judge held that the decision to introduce OTS scheme was taken by the State Government with an intention to help the “big debtors” of the Bank and that since the Government has no power to direct introduction of OTS scheme in the Bank, the scheme was liable to be set aside and it was accordingly set aside.

We have heard Sri K.G.Kannabiran, learned Senior Counsel assisted by Sri M.P.Ugle for RBI, Sri C.V.Mohan Reddy, learned Advocate General for the State Government and the Registrar, Sri E.Manoher, learned Senior Counsel assisted by Sri Ashok Anand Kumar, for the Liquidator of the Bank, Sri S.Ramchandra Rao, learned Senior Counsel assisted by Sri B.Srinivas for respondent No.5 in Writ Appeal No.1053 of 2005, Sri P.Venugopal for the applicant in W.A.M.P.No.729 of 2007 in Writ Appeal No.1213 of 2005 and Sri V.Srinivas for respondent No.1 in Writ Appeal No.1053 of 2005 and Batch and also for writ petitioners in Writ Petition No.6214 of 2005, W.P.No.20607 of 2006 and W.P.No.737 of 2007.

Before proceeding further, it is necessary to point out that during the hearing of these cases, on the submissions made by Sri Vedula Srinivas that the Government of India while disposing of the appeal filed against the order of cancellation of licence failed to give an opportunity of personal hearing to the appellant, we have summoned the record from the Central Government which was produced by Sri A.Rajasekhar Reddy, learned Assistant Solicitor General. On perusal of the record we were satisfied that a fair opportunity was indeed given by the Central Government - the appellate authority before passing order dated 08.11.2005 and when we pointed out the same to the learned counsel, he submitted that since the order of the appellate authority does not contain detailed reasons and to avoid multiplicity of proceedings, this Court may, independent of the order passed by the Government of India in appeal, decide the issue of validity of

cancellation of licence by the RBI. All the learned counsel appearing for the parties in this batch of cases agreed for the said course. Therefore, with the consent of all the learned counsel we have heard their submissions on merits on the validity of the decision of the RBI cancelling the Bank's license, though the learned Single Judge refrained from going into the said issue on the ground of pendency of appeal before the Central Government.

Contentions:

Though Sri Kannabiran commenced the arguments in this batch of cases, in view of the issue of the validity of the cancellation of the Bank's licence having to be decided by us as the learned Judge has not adjudicated the said issue, we permitted Sri Vedula Srinivas to make his submissions to substantiate his challenge to the order of cancellation of the Bank's licence. Accordingly, he made his submissions followed by the learned counsel appearing for the respective parties including the learned Advocate General.

Sri Vedula Srinivas advanced the following contentions:

1. The RBI while cancelling the licence invoked the provisions of Sections 11, 18 and 24 of the 1949 Act which are made inapplicable to the Bank by virtue of Section 56(za) read with Section 36-A of the 1949 Act as it has been prohibited or precluded from accepting deposits by virtue of earlier orders passed by the RBI.
2. The order of the RBI cancelling licence is vitiated on the ground of its consideration of irrelevant aspects and its failure to consider the relevant

aspects.

3. The RBI failed to consider that the Bank's financial position was not irretrievable, in that, its asset position is clearly on a higher side as against the deposits to be repaid and that mere inability of the Bank to immediately repay the deposits is not a justifiable ground for cancellation of licence.

4. The RBI acted hastily in directing winding up of the Bank on 3.12.2004 itself even before cancelling the Bank's licence and this action prevented the Bank from exhausting the remedy of filing a statutory appeal under Section 22(5) of the 1949 Act.

5. The action of the Registrar in winding up the Bank without following the procedure under Section 64 and 115-B of the 1964 Act is illegal. That, Section 115-B prescribed procedure for winding up of an eligible cooperative bank. Under Section 64 the Registrar shall issue a notice to the society before passing the order for winding up of the Bank. As this procedure is not followed, the order of the Registrar winding up the Bank cannot be sustained.

6. The RBI indulged in discrimination by not cancelling the Bank's licence while not doing so in respect of the Charminar Co-operative Bank and Vasavi Co-operative Bank which were also more or less similarly situated to that of the Bank.

7. The OTS schemes periodically introduced by the

RBI or the State Government or the Registrar, as the case may be, are to the detriment of the Banks' interests; that the reduction of rate of interest as originally agreed by the borrowers from the date of disbursement of loan itself is contrary to the RBI guidelines besides being in violation of Section 115-B of the 1964 Act under which prior approval of the RBI is mandatory.

8. The State Government treated the Bank differently from the Charminar Co-operative Bank and Vasavi Co-operative Bank in whose cases it obtained prior approval of the RBI for implementation of the OTS scheme, while no such approval is obtained in the case of the Bank.

Sri Vedula Srinivas supplemented his arguments with brief written submissions.

Sri K.G.Kannabiran, learned senior counsel appearing for the appellant (RBI) in W.A.No.1053 of 2005 made the following submissions:

1. the decision of the RBI to cancel the banking licence of the Bank was taken in the best interest of the depositors.
2. the RBI after a thorough satisfaction arrived at by a series of inspections and the reports that the affairs of the Bank are being conducted in a manner detrimental to the interests of its present and future depositors and that public interest would be adversely affected if the Bank is allowed to carry on its banking business, cancelled the

banking licence of the Bank and that before taking this extreme but a necessary step, the RBI had given number of opportunities to the Bank to rectify the defects.

3. As the Bank failed to rectify the defects and improve its functioning, the RBI had no other option but to cancel the licence.

4. since the power of liquidation following the order of cancellation of licence is vested with the Registrar in view of Section 36-A of the 1995 Act read with Section 115-B of the 1964 Act, a direction was issued to the Registrar to wind up the Bank which is a Co-operative Society and that liquidation being the logical consequence of cancellation of licence, the learned Single Judge erred in holding that the RBI should not have passed an order directing the liquidation of the Bank simultaneously or alongwith the order of cancellation of the Banking licence.

5. As held in **Joseph Kuruvilla Vellukunnel Vs. Reserve Bank Of India**[1] the RBI is vested with wide powers to take a decision on the cancellation of licence and winding up of a banking company and that the Court while exercising the power of judicial review is only concerned with the decision making process and not the merits of the decision. The learned Senior Counsel in this regard relied upon **Peerless General Finance and Investment Company Private Limited Vs. Reserve Bank of India**[2]**.**

6. The position of Charminar Co-operative Bank and Vasavi Co-operative Bank was different from that of the Bank, in

that the RBI was constrained to cancell the latter's licence having regard to its irretrievable financial position and therefore there was no question of RBI meting out discriminatory treatment to the Bank.

Sri M.P.Ugle also filed brief written submissions.

Learned Advocate General appearing for the appellants in Writ Appeal No.1165 of 2005 and Writ Appeal No.1095 of 2005, while supporting the contentions of Sri K.G.Kannabiran on the validity of the order of cancellation of licence of the Bank by the RBI submitted that the role of the State Government/Registrar commences with the direction given by the RBI under Section 13-D of 1961 Act. He further submitted that when once the licence of a banking company is cancelled the Registrar has no option but to order for winding up of the Bank under Section 115-B (ii) of the 1964 Act which is made applicable to a Cooperative Society involved in the banking business by virtue of the provisions of Section 36-A of the 1995 Act and that therefore issuing of show cause notice would not have served any purpose by the Registrar and the same would have remained an unnecessary formality. He also termed the act of winding up of the Bank a mere ministerial act. The learned Advocate General further submitted that the RBI guidelines on OTS have no application to the Bank after its winding up as the former ceases to have any control over the Bank after it is wound up and that the learned Single Judge committed a serious error in holding that the State Government had no role to play in envisaging the scheme for OTS. He further submitted that the OTS scheme is conceived in the best interest of the depositors to ensure speedy recovery of the outstanding loans of the

borrowers. He gave out that out of the total number of 1,31,000 depositors, 1,23,000 depositors had the deposits worth Rs.1,00,000/- or less each; that they were all repaid their principle amounts totaling to Rs.217 crores; that there are 8200 depositors with deposits of more than Rs.1,00,000/- each and the present liability towards them is Rs.110 crores. He also submitted that the Bank is expected to receive a sum of Rs.250 crores under OTS scheme and that from out of the said money the left over depositors of 8200 in number will be paid back the sum of Rs.110 crores apart from clearing the loan amount of Rs.75 crores borrowed from Deposit Insurance and Credit Guarantee Corporation (for short "the Corporation"). He also submitted that all the 1,23,000 small depositors to whom principal amounts were repaid will be paid interest due to them calculated till the date of payment from out of the surplus amount recovered under the OTS scheme. He therefore submitted that the OTS scheme benefits the depositors of the Bank, in stead of harming their interests.

Sri E.Manoher, learned Senior Counsel appearing for the Bank and also for the Liquidator in Writ Appeal No.1072 of 2005 submitted that while cancellation of the Bank's licence and its winding up are unexceptionable measures warranted in the circumstances in which the state of affairs of the Bank existed, the learned Single Judge grievously erred in invalidating the OTS scheme mainly on the ground that since the banking subject is in the List-I, the State Government is denuded of the power to frame any scheme and that as the appointment of liquidator is set aside, the OTS scheme cannot be sustained. The learned Senior Counsel while referring to the argument of Sri Vedula Srinivas that

in the case of Charminar Bank and Vasavi Bank the State Government has taken prior approval of the RBI for introducing OTS scheme and that in the case of the Bank no such approval was obtained, submitted that in the case of the said two banks, the RBI has not cancelled the licence and that therefore since the said Banks continued to be under the control of the RBI, it was imperative for the State Government/Registrar to obtain its prior approval. The learned counsel submitted that since the licence of the Bank was cancelled, the RBI did not any longer have the control over the Bank and this obviated the necessity for the State Government/Registrar to obtain its permission. He therefore submitted that the Registrar/Liquidator was perfectly competent to introduce OTS scheme and that the whole reasoning of the learned Single Judge in setting aside the order appointing the liquidator and the OTS scheme is devoid of any legal basis and that therefore, the order of the learned Single Judge is liable to be set aside.

Sri S.Ramchandra Rao, learned Senior Counsel who appeared for a borrower who was allowed to act as intervener in Writ Appeal No.1053 of 2005, supported the contentions of Sri K.G.Kannabiran, the Advocate General and Sri E.Manoher.

Sri P.Venugopal appearing for the Corporation which got itself impleaded in Writ Appeal No.1213 of 2005 submitted that consequent on the cancellation of the Bank's licence, the liquidator made a claim of Rs.263.77 crores on the Corporation and that it has released a sum of Rs.75, 59, 59, 06.33 crores in settlement of the claims of the Bank on the Liquidator furnishing an undertaking that if this Court sets aside the order of liquidation and directs

revival of the licence of the Bank he will refund the entire claim amount to the Corporation. The learned counsel submitted that in such an event appropriate directions may be given to the Liquidator to comply with the said undertaking.

The Legal Regime:

As the Bank is governed by as many as four enactments, namely, The Andhra Pradesh Mutually Aided Cooperative Societies Act 1995 (the 1995 Act), The Andhra Pradesh Cooperative Societies Act 1964 (the 1964 Act), The Banking Regulation Act 1949 (the 1949 Act), and the Deposit Insurance and Credit Guarantee Corporation Act 1961 (the 1961 Act), it is necessary to notice the relevant provisions of these Acts in order to appreciate respective contentions of the learned counsel.

The 1949 Act:

Section 5 (b) of the 1949 Act defines 'banking' as under:

> " "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

Section 5(c) defines "banking company" as:

> " "banking company" means any company which transacts the business of banking in India."

Section 22 deals with licensing of banking companies, which reads as under:

> " **Licensing of banking companies:-** (l) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be

issued subject to such conditions as the Reserve Bank may think fit to impose.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of Section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that] the following conditions are fulfilled, namely:-

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;

(c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

(4) The Reserve Bank may cancel a licence granted to a banking company under this section-

(i) if the company ceases to carry on banking business in India; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is

communicated to it, appeal to the Central Government.
(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final."

Section 35 of the 1949 Act provides for inspection of the banking company by the RBI and it reads as under:

" **35. Inspection:-** (1) Notwithstanding anything to the contrary contained in S.235 of the Companies Act, 1956, the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(1A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time. may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.

(2) It shall be the duty of every director or other officer or employee of the banking company to produce to any officer making an inspection under sub-section (1) or a scrutiny under sub-section (1A)] all such books, accounts and other documents in .his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) or a scrutiny under sub-section (1A) may examine on oath any director or other officer or employee of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection or scrutiny made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing-

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

Explanation:- For the purpose of this section the expression "banking company' shall include—

(i) in the case of a banking company incorporated outside India, all its branches in India; and

(ii) in the case of a banking company incorporated in India—

a. all its subsidiaries formed for the purpose of carrying on the business of banking

exclusively outside India; and

b. all its branches whether situated in India or outside India.

(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank in relation to any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, sub-sections (1) to (5) shall apply in relation to regional rural banks as if every reference therein to the Reserve bank included also a reference to the National Bank."

Section 35A of the 1949 Act, empowers the RBI to give directions inter alia to prevent the affairs of any banking company. It is relevant to extract the said provision hereunder:

" **35A. Power of the Reserve Bank to give directions-**

(1) Where the Reserve Bank is satisfied that-

(a) in the public interest: or

(aa] in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking Company: or

(c) to secure the proper management of any banking company generally,

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any

direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

Under Section 36(1)(d)(i to iv) of the 1949 Act the RBI, in public interest, inter alia empowered to require the banking company to take various measures enumerated hereunder:

" **36. Further powers and functions of Reserve Banks.-** (1) The Reserve Bank may—

(a) xxxxxxxxxxxx

(b) xxxxxxxxxxxx

(c) xxxxxxxxxxxx

(d) at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors, it is necessary so to do by order in writing and on such terms and conditions as may be specified therein-

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it: require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its officers or branches are being conducted and make a report thereon."

Section 45W of the 1949 Act reads as under:

" **Part II not to apply to banking companies being wound up:-** Nothing contained in Part II shall apply to a banking company which is being wound up."

Section 56(za)(i) of the 1949 Act reads as under:

" {za) in section 36A,-

(i) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) The provisions of section 11, section 18 and section 24 shall not apply to a co-operative bank which has been refused a licence under section 22 or whose license has been cancelled under that section or which is or has been prohibited or precluded from accepting deposits by virtue of any order made under this Act or of any alteration made in its bye-laws""

Section 56(zb) of the 1949 Act reads as under:

" Part IIA except sections 36AAA, 36AAB and 36AAC, Part-IIC, Part-III, except sub-section (1), (2) and (3) of Section 45, and Part-IIIA except section 45W shall be omitted."

The 1961 Act:

Section 2(dd) of the Act defined "co-operative bank" as:

“(dd) "co-operative bank" means a State co-operative bank, a Central co-operative bank and a primary co-operative bank.”

Section 2(ff)(ii) of the Act defined “defunct co-operative bank” as:

"defunct co-operative bank" means a co-operative bank-

(ii) which has been ordered or directed to be wound up;”

Section 2(gg) of the Act reads as under:

“(gg) "eligible co-operative bank" means a co-operative bank the law for the time being governing which provides that-

(i) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction, of the bank may be made only with the previous sanction in writing of the Reserve Bank;

(ii) an order for the winding up of the bank shall be made if so required by the Reserve Bank in circumstances referred to in section 13-D;

(iii) if so required by the Reserve Bank in public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the supersesssion of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor for such period or periods not exceeding 5 years in the aggregate as may from time to time be specified by the Reserve Bank;

(iv) an order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or an order for the supersession of the committee of management or other managing body (by whatever name called) of the bank and

the appointment of an administrator therefor made with the previous sanction in writing or on the requisition of the Reserve Bank shall not be liable to be called in question in any manner; and

(v) the liquidator or the insured bank or the transferee bank, as the case may be, shall be under an obligation to repay the Corporation in the circumstances to the extent and in the manner referred to in section 21."

Section 13-A of the Act contemplates registration of co-operative banks and it is relevant to extract the same hereunder:

"**13-A Registration of co-operative banks:-** (1) No co-operative bank shall be registered under this section unless it is an eligible co-operative bank.

(2) Subject as aforesaid -

(a) the Corporation shall register every existing co-operative bank as an insured bank before the expiry of thirty days next following the commencement of the Deposit Insurance Corporation (Amendment) Act, 1968;

[b] the Corporation shall register as an insured bank-

(i) every new co-operative bank [other than a primary credit society becoming a primary co-operative bank after the commencement of the Deposit Insurance Corporation (Amendment) Act, 1968] as soon as may be after it is granted a licence under S.22 of the Banking Regulation Act, 1949;

(ii) a primary credit society becoming a primary co-operative bank after such commencement within three months of its having made an application for a licence under the said section.

Provided that a bank referred to in clause (b) shall not be so registered if it has been informed by notice in writing by the Reserve Bank that such a licence cannot be granted to it.

(iii)every co-operative bank which has come into existence after the commencement of the Deposit Insurance

Corporation (Amendment) Act, 1968, as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business, at the commencement of Banking Laws (Application to Co-operative Societies) Act, 1965, or at any time thereafter, within three months of its having made an application for a licence under the said section;"

Section 13-D of the Act enumerates the circumstances in which RBI may require winding-up of cooperative banks, and it reads as under:

"**13-D Circumstances in which Reserve Bank may require winding up of co-operative banks:-** (1) The circumstances referred to in sub-clause (ii) of clause (gg) of section 2 (being circumstances in which the Reserve Bank may require the winding up of a co- operative bank) are the following, namely : -

(a) that the co-operative bank has failed to comply with the requirements specified in S.11 of the Banking Regulation Act, 1949; or

(b) that the co-operative bank has by reason of the provisions of Section 22 of the said Act become disentitled to carry on banking business in India; or

(c) that the co-operative bank has been prohibited from receiving fresh deposits by an order under sub-section (4) of section 35 of the said Act or under clause (b) of sub-section (3A) of S.42 of the Reserve Bank of India Act, 1934; or

(d) that the co-operative bank having failed to comply with any requirement of Banking Regulation Act, 1949, other than the requirements laid down in section 11 thereof, has continued such failure or, having contravened any provision of that Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from lime to time, after notice in writing of such failure or contravention has been conveyed to the co-operative bank; or

(e) that the co-operative bank is unable to pay its debts; or

(f) that in the opinion of the Reserve Bank -

(i) a compromise or arrangement sanctioned by a competent authority in respect of the co-operative bank cannot be worked satisfactorily with or without modifications, or

(ii) the continuance of the co-operative bank is prejudicial to the interests of its depositors.

(2) Without prejudice to the provisions of any other law for the time being in force, a co-operative bank shall, for the purpose of clause (e) of sub-section (1), be deemed to be unable to pay its debts : -

(i) if, on the basis of the returns, statements or information furnished to the Reserve Bank under or in pursuance of the provisions of Banking Regulation Act, 1949, the Reserve Bank is of opinion that the co-operative bank is unable to pay its debts; or

(ii) if the co-operative bank has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days if such demand is made elsewhere and, in either case, the Reserve Bank certifies in writing that the co-operative bank is unable to pay its debts."

The 1964 Act:

Section 115-A (a) and (b) of the Act defines eligible cooperative bank as under:

" (a) 'The said Act' means the Deposit Insurance Corporation Act, 1961."

" (b) 'eligible Co-operative Bank' means a co-operative bank as defined in clause (gg) of Section 2 of the said Act".

Section 115-B of the Act deals with the special provisions applicable to eligible Co-operative Banks, which are extracted hereinbelow:

" **115-B.Special provisions applicable to eligible Co-operative Banks:-** Notwithstanding anything in this Act, the following provisions shall apply to an eligible co-operative bank, namely:-

(i) an order for winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction, of the bank may be made under the provisions of this Act only with the previous sanction in writing of the Reserve Bank;

(ii) an order of the winding up of the bank shall be made under the provisions of this Act, if so required by the Reserve Bank in the circumstances referred to in Section 13-D of the said Act;

(iii) if so required by the Reserve Bank in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made under the provisions of this Act for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of a special officer therefor for such periods not exceeding five years in the aggregate as may, from time to time, be specified by the Reserve Bank;

(iv) an order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or an order for the supersession of the committee of management or other managing body (by whatever name called) of the bank and appointment of a special officer therefor made with the previous sanction in writing or on the requisition of the Reserve Bank shall not be liable to be called in question in any manner; and

(v) the liquidator or the insured bank or the transferee bank, as the case may be, shall be under an obligation to repay the corporation in the circumstances to the extent and in the manner referred to in section 21 of the Act."

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The 1995 Act:

Section 36-A of the 1995 Act reads as follows:

> " **36-A. Application of Chapter XIII-A of the Andhra Pradesh Co-operative Societies Act, 1964:-** The provisions of Chapter XIII-A containing Sections 115-A and 115-B of the Andhra Pradesh Co-operative societies Act, 1964 shall mutatis, mutandis apply to all Co-operative Banks.
>
> Explanation:- For the purposes of this section a "Co-operative Bank" means a society registered under this Act, which is doing the business of Banking as defined in clause (b) of sub-section (1) of Section 5 of the Banking Regulation Act 1949."

The RBI's Order of cancellation of Bank's licence— Whether Legal and Valid?

In order to decide this issue it is necessary to refer to the scope of judicial review under Article 226 of the Constitution.

A constitution bench of the Supreme Court in **Nagendra Nath Bora and Another Vs. Commissioner of Hills Division and Appeals, Assam and Others**[3] while dealing with the certiorari jurisdiction of the High Court under Article 226 of the Constitution of India, held that it is not meant to take the place of an appeal where statute does not confer a right of appeal, its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer and that mere formal or technical errors even though of law will not be sufficient to attract this extraordinary jurisdiction. It was further held that where an

Act has created its own hierarchy of officers and appellate authorities to administer the law, the High Court has no concern with the manner in which those powers have been exercised so long as those authorities have functioned within the letter and spirit of the law.

In **State of Uttar Pradesh Vs. Maharaj Dharmender Prasad Singh**[4], the Supreme Court held that judicial review under Article 226 of the Constitution cannot be converted into an appeal and that it is directed not against the decision, but is confined to the examination of the decision making process and that decision making process includes examination, as a matter of law of the relevance of the factors taken into consideration by the decision making authority and whether the decision is vitiated by taking into account of irrelevant factors.

In **Tata Cellular Vs. Union of India**[5] the Supreme Court held that judicial review is concerned with the decision making process and not with the merits of the decision. The Supreme Court held that unlike in the case of an appeal, the Court cannot substitute its own decision and that the grounds upon which the judicial review can be broadly classified are, i) illegality, which means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it, ii) irrationality, namely Wednesbury's un-reasonableness, i.e., the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it, and iii) procedural impropriety.

In **Union of India Vs. G.Ganayutham**[6] the Supreme Court reiterated the principles laid down in **Tata Cellular**. While dealing with the doctrine of proportionality the Supreme Court referred to various Indian and English cases including the Associated Provincial Picture Houses Ltd., Vs. Wednesbury Corporation – (1948) 1 KB 223, and Council of Civil Service Union Vs. Minister for Civil Services – (1984) 3 All ER 935. After undertaking the detailed analysis on the issue of proportionality in administrative law, the Supreme Court in Para-31 summarized as under:

> " The current position of proportionality in administrative law in England and India can be summarised as follows :-
>
> (1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. **The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test**.
>
> (2) **The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards**. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.
>
> (3) (A) As per Bugdaycay (R v Secy.of State, ex p

Bugdaycay – (1987) 1 All ER 940), Brind (R v Secy.for Home Dept. ex p Brind – (1991) 1 All ER 720) and Smith (R v. Ministry of Defence, ex p Smith – (1996) 1 All ER 257), as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4) (b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14." (emphasis added)

In **Apparel Export Promotion Council Vs. A.K.Chopra**[7] the Supreme Court while examining the correctness of the judgment of the Delhi High Court in interfering

with the penalty imposed on an employee by his employer held at para-17 as under:

> "Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute, its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

The Supreme Court extracted the judgment of Lord Hailsham in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, which we find useful to extract hereinbelow:

> "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court. "

In **Syed T.A.Naqshbandi and Others Vs. State of Jammu & Kashmir and Others**[8] the decision of the High Court of Jammu and Kashmir taken on the administrative side on the matter of granting Selection Grade and Super Time Scale to judicial officers was subjected to challenge before the Supreme Court. While dealing with the said issue, the Supreme Court at para-7 held as under:

> "……..As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent

> analysis or appraisal of the materials by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court."

In **Delhi Development Authority and Another Vs. UEE Electricals Engg.(P) Ltd., and Another**[9] the Supreme Court reiterated the aforementioned principles of law and held in para-12 as under:

> "Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability such as lack of fairness in procedure, illegality and irrationality. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

In **Jayrajbhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel and Others**[10] the Supreme Court while restating the principles on the scope of judicial review struck a note of caution that as held in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141), unless the courts while undertaking judicial review do not keep in view the settled legal principle that they are concerned only with the decision making process but not with the merits of the decision, there is scope for the Courts, under the guise of exercise of power being themselves guilty of usurping power.

In **Ganesh Bank, Kurundwad Ltd., Vs. The Union of**

India[11] the Supreme Court while reaffirming the principles of judicial review in administrative matters laid down in the earlier judgments, held that the Courts while exercising the power of judicial review shall observe judicial restraint and the duty of the Court is to (a) confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; (e) reached a decision which no reasonable Tribunal would have reached; or (f) abused its powers.

Keeping in view the contours of judicial review as delineated in the decisions of the Supreme Court, as discussed above, we shall now examine the validity of the order of the RBI.

The material on record discloses that the officials of the RBI had been making periodical statutory inspections of the Bank in exercise of its powers under Section 35 of the 1949 Act. Following one such inspection carried out with reference to the Bank's financial position as on 31.3.2002, the Deputy General Manager of the RBI while enclosing a copy of the inspection report dated 31.7.2002 alongwith his letter of even date, incorporated in the annexure of the letter the summary of the features observed with regard to working of the Bank. Through the said letter the RBI informed the Bank that it was categorized as 'sick' with effect from 31.3.2002. It has been indicated in the annexure that the Bank failed to apply the provisions of Section 22(3)(a) of the 1949 Act with regard to its networth and the provisions of Section 11(1) of the 1949 Act in relation to its minimum capital. It was also pointed

out that as against the Capital to Risk Assets Ratio (CRAR) of 1.7% as reported by the Bank, its CRAR was worked out to (-) 23.6% as on 31.7.2002. Similar deficiencies were pointed out in respect of loan assets, investments, funds management and liquidity, deficiencies in audit and discrepancies in the earnings appraisal.

Having noticed the aforementioned serious deficiencies in the Bank's functioning, the RBI vide its letter dated 18.10.2002 communicated its serious concern at the state of affairs of sick/weak urban co-operative banks in general and the deteriorating CRAR and net NPA position of the Bank in particular, has advised the Bank to draw up an annual action plan which should cover the period up to 31.3.2003. The letter has also indicated the quarterly targets regarding the areas which the action plan should cover. The Bank was also advised to take measures to reduce the establishment expenditure to improve profitability, ensure prompt submission of all statutory returns and also the integrity of regular reporting, adhere to the special directions imposed on the Bank without any deviations and obtain prior approval of RBI before declaring dividend to the shareholders. The RBI in the said letter also cautioned the Bank that any further deterioration in the Bank's financial position as also non submission of action plan/progress report may invite stringent measures from the RBI.

The RBI, in modification of the earlier directions given on 28.8.2002, issued fresh directions on 21.3.2003 in exercise of its powers under Section 35-A read with Section 56 of the 1949 Act to the effect that from the close of business on 21.3.2003 it shall not,

without prior approval in writing from the RBI, grant or renew any loans or advances, make any investment, incur any liability including borrowal of funds and acceptance of fresh deposits, disburse or agree to disburse any payment whether in discharge of its liabilities and obligations or otherwise, transfer or otherwise dispose of any of its properties or assets except to the extent and in the manner provided in the said communication. Simultaneously, the RBI through its letter dated 21.3.2003 communicated through Chief General Manager, required the Registrar to supersede the Board of Directors of the Bank and appoint an administrator therefor in terms of provisions of Clause-(iii) of Section 115-B of the 1964 Act. It is communicated in the said letter that the RBI resorted to the said measure after being satisfied that the same was necessary in the public interest and for preventing the affairs of the Bank from being conducted in the manner detrimental to the interests of the depositors and for securing the proper management of the Bank.

The RBI got conducted another annual inspection with reference to the Bank's position as on 30.6.2003 and communicated the inspection report through its Deputy General Manager's covering letter dated 13.11.2003. In the said report it was stated that there was improvement in the net liquid assets position from the previous financial year and it was attributed to the restrictions imposed by the RBI regarding repayment of deposits by the Bank. As regards the asset quality, it was clearly observed that while in some cases the realisability of property mortgaged to the Bank was in doubt due to litigation, other banks had pitched in with their claim on the same mortgaged property in

few other cases. The report indicted the previous Board for managing the Bank's affairs with absolute lack of professionalism and observed that the Board which was superseded later had recommended loan proposals in violation of RBI's guidelines and hugely exposed the Bank to sensitive and prohibited sector like real estate. It is further observed as under:

> " **Systems-Compliance to Regulations**
>
> Inspite of being adversely commented upon in the last inspection report the chartered accountant firm M/s.Purushotham and Co had been allowed to audit, the bank's accounts for the year ended March 31, 2002. Further, the internal audit of RP Road branch which accounted for about 90% of bank's total advances was also assigned to the same firm during the financial year 2002-03.
>
> The bank had thoroughly failed to perform its intended role as purveyor of micro credit, as it had generally financed big and influential borrowers involved in commercial construction, an activity expressly prohibited by RBI. The top 86 borrowal accounts with outstanding balance of Rs.100 lakh and above accounted for 60.4% of bank's total loans and advances.
>
> The outstanding balances in several individual and group borrowal accounts had continued to exceed prudential exposure ceilings stipulated by RBI.
>
> The advances granted to at least two NBFCs, another prohibited sector for urban banks had remained un-recovered.
>
> The bank had violated the provisions of Directions under which it was placed by paying Rs.1000/- per deposit, in case of multiple deposits held by same individual, instead of paying Rs.1000/- per depositor.
>
> Although the special directions imposed on the bank by RBI in August 2002 had stipulated that the bank should accept fresh term deposits only at market related rates offered by commercial banks, the bank had offered much higher interest rates upto 12%, till March 31, 2003.
>
> At least in one case, the bank had followed a

discriminatory practice of allowing additional discretionary interest to an institutional depositor.

Inter bank deposits aggregating Rs.3092.05 lakhs belonging to three other urban co-operative banks were yet to be repaid by the bank.

The compliance furnished by the bank to the last inspection report of RBI was not satisfactory as many of the defects pointed out therein had remained un-rectified."

The inspection of the Bank with its position as on 30.6.2004 by the RBI disclosed further deterioration of its solvency position, severe impairment of assets portfolio and the continuous default of the Bank in maintaining SLR. It was also observed that the compliance furnished by the Bank to the previous RBI report was incomplete and not satisfactory as many of the defects pointed out therein persisted.

After giving certain directions under Section 35-A of the 1949 Act, following the said inspection, the RBI eventually issued a show cause notice dated 29.9.2004 under Section 22 of the 1949 Act to the Bank. The show cause notice contained as many as 14 deficiencies and irregularities in the functioning of the Bank which was called upon to show cause why its licence granted on 23.9.1998 for carrying on banking business could not be cancelled and why steps should not be taken to wind up the Bank. The Bank gave its reply dated 12.10.2004 and the RBI having not been satisfied with the reply, passed order on 6.12.2004 whereby it has cancelled the Bank's licence by invoking its power under Section 22 of the 1949 Act. The RBI also addressed a letter bearing No.UBD.WGS.BSD.IV/RLC /12.3.0775/2004-05, December 2004 through its Executive Director, requiring the Registrar to make an

order for winding up of the Bank and appoint a liquidator to take charge in terms of Section 36A of the 1995 Act read with Section 115-B (ii) of the 1964 Act and Section 13-D of the 1961 Act. In compliance with the said direction, the Registrar passed an order dated 7.12.2004 whereby he has ordered winding up of the affairs of the Bank and appointed Sri V.Amarender Rao, Joint Registrar/Managing Director of the Andhra Pradesh State Cooperative Union limited, Hyderabad as Liquidator under Section 41 (1) (a) of the 1995 Act.

We may now advert to the principal contention of Sri Vedula Srinivas that the RBI mainly based its order while cancelling the Bank's licence, on the latter's failure to comply with the requirements of the provisions of Section 11, 18, and 24 of 1949 Act relating to defects in paid-up capital, cash reserves and assets. This submission of the learned counsel is based on Section 36-A of the Act which makes the provisions of Sections 11, 18, and 24 in-applicable to a co-operative bank which, inter alia, is prohibited or precluded from accepting deposits by virtue of any order made under the 1949 Act or any alteration made in the bank's bye-laws. He referred to the directions issued by the RBI to the Bank on 28.8.2002 and 21.3.2003 in order to contend that by issuing the directions contained in the said proceedings, the RBI inter alia prohibited the Bank from accepting fresh deposits and thereby the RBI had taken into consideration factors which are specifically excluded by the statutory provisions of the 1949 Act.

Undoubtedly, under the proceedings dated 28.8.2002 directions issued by the RBI to the Bank included prohibition of acceptance of fresh deposits by it. But, a reading of the show

cause notice makes it evident that the deficiencies contained therein are not merely confined to the aspects relating to Sections 11, 18 and 24 but they extend to different aspects of commissions and other deficiencies un-connected with the said provisions of the 1949 Act. For instance, deficiencies mentioned at V, IX, XII and XIII of the show-cause notice which, for the sake of convenience are reproduced below:

> " v. The bank had imprudently taken over loans from other banks/institutions without enquiring about the health of the accounts/borrowers. As on date of the inspection all these accounts had became NPAs. Further, in several cases the bank had accepted securities which were subject to litigation, there were counter claims by other banks and where the realization of their value was doubtful.
>
> ix. The bank had violated the single and group exposure limits in several accounts. Thus, the bank had not adhered to the guidelines issued by RBI in this regard.
>
> xii. There were several instances where deposits were renewed at the higher rate of interest prevailing as on date of maturity and not at the reduced rate of interest prevailing on the date of renewal. Further, in all these cases the time gap between date of maturity and date of renewal was beyond the tolerance limit of 14 days.
>
> xiii. The bank had not provided for interest payable on matured deposits upto 31 March 2004. Further, despite the previous 2 RBI inspection reports calling for audit of the interest payable on deposits account, the same had not been conducted."

The above extracted deficiencies amply indicate that the affairs of the Bank were conducted in the manner detrimental to the interests of the depositors. Under Section 22(4) of the 1949 Act non-fulfillment of the conditions specified in sub-section 3A of that provision constitutes a ground for cancellation of licence. The

said sub-section in turn refers to the fulfillment of the conditions specified in sub-section 3. Under sub-section 3(B) one of the conditions to be satisfied by the bank is that the affairs of the banking company are not being, or, are not likely to be conducted in the manner detrimental to the interests of its present or future depositors. From the successive inspections carried out by the RBI, the reports prepared on such inspections and the directions given from time to time on noticing the various deficiencies which are already referred to in the foregoing, the RBI was left in no doubt that there was gross mismanagement of the affairs of the Bank and its business was being conducted in the manner which was wholly detrimental to the interests of the depositors. All these inspection reports and the several directions issued by the RBI from time to time, in our view constitute irrebuttable evidence to justify the conclusion arrived at by the RBI that the Bank has miserably failed to satisfy the requirements of Section 22(3) and (3A) of the 1949 Act. Even if we accept the submission of the learned counsel that the RBI had taken the aspects covered by Sections 11, 18 and 24 of the 1949 Act into consideration, in our considered opinion that by itself would not invalidate the order of the RBI for, the decision of the RBI is not exclusively based on those aspects alone, but on many other valid aspects which were discussed above and on which the decision of the RBI can be sustained.

From the aforementioned discussion undertaken by us, we are satisfied that the order of the RBI is sustainable on other grounds even if we eschew from consideration the grounds relating to deficiencies connected with Sections 11, 18 and 24 of the 1949 Act.

In **Joseph Kuruvilla Vellukunnel** the Supreme Court dealt with the nature and scope of the regulatory powers of the RBI over the licencee Banks. It is necessary in this context to briefly refer to the facts of that case. The RBI's application made to the High court of Kerala under Section 38 of the Banking Companies Act 1949 (the nomenclature of the Act has been changed with effect from 1.3.1966 as The Banking Regulation Act 1949) read with The Companies Act 1956 for the winding up of Palai Central Bank Limited, for appointment of the Official Liquidator of the High Court as the Liquidator, and for appointment of Official Liquidator as provisional Liquidator was allowed. This order was challenged by way of appeal with special leave before the Supreme Court. Before seeking winding up, the RBI made periodical inspections of the Palai Bank and in every such inspection it found irregularities which were pointed out to the said Bank and as it failed to rectify the defects and carry out the directions issued by the RBI, the latter moved the High Court for winding up of the Bank. In this factual background, while repelling the contentions that the enquiries made by the RBI in the past were not thorough, that its action to decide to wind up was unreasonable, and that Section 38(1)(3)(b)(iii) are void being violative of Article 14 and 19 of the Constitution of India and ultra vires being in conflict with Article 301 of the Constitution, the Supreme Court held that the most important function of the Reserve Bank is to regulate the banking system generally, the Reserve Bank has been described as a Bankers' Bank and by its position as a central bank it acts as an agency for collecting financial information and statistics. On the analysis of various provisions of the Banking Companies Act

1949, the Supreme Court in paragraphs 19 and 22 held as under:

> “19. The above analysis of some of the provisions of the Reserve Bank of India Act shows that the Reserve Bank of India has been created as a central bank with powers of supervision, advice and inspection over banks, particularly those desiring that they be included in the Second Schedule or those scheduled already. The Reserve Bank thus safeguards the economy and the financial stability of the country. No doubt, the Board is composed of nominated members; but from the nature of things, it could not be otherwise. Neither election nor competitive examinations can effectively take the place of nominations, if the Board is to be composed of men of proved worth and standing, and there is no other method which can even be contemplated. No doubt the members of the Board are subject to removal, but neither integrity nor efficiency is secured only by such guarantee, and we have no reason to think that the Reserve Bank acted in this case, or acts in other cases under pressure or from oblique motives. As was pointed out in another connection by this Court in All India Bank Employees Association v. National Industrial Tribunal, 1961-2 Lab LJ 385 = AIR 1962 SC 171: "if it was not the Reserve Bank of India, the only other authority that could be entrusted with the function would be the Finance Ministry of the Government of India and that department would necessarily be guided by the Reserve Bank having regard to the intimate knowledge which the Reserve Bank has of the banking structure of the country as a whole and of the affairs of each bank in particular. "
>
> 22. We have seen that the Reserve Bank was already functioning as a central bank with a certain measure of control over the other banks, scheduled or unscheduled. This control was tightened in the Banking Companies Act by making provisions which were intended to protect the interests of the depositors. Differences noticeable between the Banking Companies Act, on the one hand and the Companies Act, on the other, which have been characterised as discriminatory, are thus explainable on the basis of the object to be achieved. We shall soon illustrate this by a

reference to the sections themselves. For the present, we only wish to emphasise that banking companies cannot be compared with other companies. The ordinary companies deal with the money of the stockholders, who own a share in the assets, who appoint their own Directors, for better or for worse, and whose liability is also limited. The banking companies are in an entirely different class, as they deal with the money of the depositors, who have no security except the solvency of the banking company and its sound dealings with their money. **Ex facie, the banking companies must be regulated somewhat differently, and the interests of the depositors must be paramount and the winding up of such companies depends upon other considerations, chief among which is the desire to pay off the creditors as far as possible in full or at least equitably. The action is thus dictated not from any abstract consideration of a long-range view of the future ability of a bank to pay its creditors but its ability to pay them at any given time. In this connection, the Reserve Bank has been given by the Banking Companies Act the power and invested with the duty of watching the affairs of every banking company with a view to ensuring the safety of the depositor's money. There is thus, at the very start a reasonable classification, which is also a very just and practical classification, to achieve the avowed purpose**." (emphasis added)

Sri Vedula Srinivas contended that since the Bank is having mortgaged properties to ensure due recovery of all the loans and that the asset position of the bank is clearly on a higher side as against the deposits to be repaid, there is no justification in cancelling the bank's licence, merely because it is not in a position to immediately repay the deposits. We do not feel persuaded to accept this contention, because it is in the teeth of the above reproduced observations of the Supreme Court in para-22 of the Judgment in **Joseph Kuruvilla Vellukunnel**, that interest of the

depositors must be paramount and the action for winding up of a bank is dictated not from any abstract consideration of a long range view of future ability of the Bank to pay its creditors but its ability to pay them at any given time. One of the main grounds for cancellation of the bank's licence as reflected in the show cause notice is that the bank is not in a position to pay its present and future deposits and the financial position of the bank leaves little scope for its revival. That the Bank's inability to repay the deposit amounts to its creditors is not disputed either in the pleadings of the Depositors Association or of Sri Pattem Suryaprakash Rao who filed two different writ petitions or by the learned counsel appearing for them.

Sri Vedula Srinivas invited our attention to the observations of the Supreme Court in para-54 of the judgment in **Ganesh Bank** wherein it was held that the present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troops, entering into international treaties etc, the distinctive features of some of these recent cases signify the willingness of the Court to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised and that if the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of powers may be regarded as manifestly erroneous. Relying upon these observations, the learned counsel submitted that since the RBI has relied upon irrelevant factors which shows total non-application of mind on its part, the impugned decision of cancellation of licence is liable to be set aside. We have not felt convinced to accept this

contention. The observations in para-54 cannot be considered in isolation. In para-55 of the said judgment, it was held as under:

> " The court will be slow t interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedure impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

In para-37 it is held that the ultimate question is whether the inference drawn by the RBI is a possible inference or something which can be said to be perversed one and that even if two views are possible since the regulating body has arrived at a conclusion on the basis of the facts and figures before it, and it has pointed out that it has been warning the appellate Bank for the last over three years it will not be proper for the Courts to substitute the judgment for that of RBI. It was further held that the RBI is an expert body to regulate the banking activities and that the action of the RBI was based on the findings of the negative net worth and CRAR of the appellate Bank, its inability to infuse fresh capital and the continued existence of a high level NPAs. The Supreme Court reiterated its view taken in **Joseph Kuruvilla Vellukunnel** that interest of the depositors is of paramount importance. This judgment of the Supreme Court instead of being of any assistance to the writ petitioners – appellants fully supports the stand of the RBI. A careful analysis of the judgment of the Supreme Court in **Ganesh Bank** shows close similarity in facts between the said case and the present cases on hand.

Sri Kannabiran argued that the prime position at which the RBI is placed by the provisions of the 1949 Act makes it *parens-patriae*, the concept of which was explained in detail in **Charanlal Sahu** Sri Kannabiran also relied on the judgment of the Supreme Court in **Peerless General Finance** in support of his contention that the RBI is invested with wide powers by the provisions of the 1949 Act and that when it has taken a decision the Court cannot interfere with it unless it is shown that the decision is wholly unreasonable or violative of any provisions of the Constitution or any statute.

I n **Peerless General Finance** the Supreme Court while examining the legality of certain directions issued by it under Section 45-K(3) of the 1949 ACT observed in paragraph 30 as under:

> " Before examining the scope and effect of the impugned paragraphs 6 and 12 of the directions of 1987, it is also important to note that Reserve Bank of India which is banker's bank is a creature of Statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country. While examining the power conferred by Sec. 58-A of the Companies Act, 1956 on the Central Govt. to prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by non banking companies, this Court in Delhi Cloth and General Mills v. Union of India, (1983) 4 SCC, 166 = (AIR 1983 SC 937) observed as under:
>
> "Mischief was known and the regulatory measure was

introduced to remedy the mischief. The conditions which can be prescribed to effectuate this purpose must a fortiori, to be valid, fairly and reasonably, relate to checkmate the abuse of juggling with the depositors/ investors' hard earned money by the corporate sector and to confer upon them a measure of protection namely availability of liquid assets to meet the obligation of repayment of deposit which is implicit in acceptance of deposit. Can it be said that the conditions prescribed by the Deposit Rules are so irrelevant or have no reasonable nexus to the objects sought to be achieved as to be arbitrary? The answer is emphatically in the negative. Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted do operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors/ investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation. One need not go so far with Ralph Nadar in 'America Incorporated' to establish that political institutions may fail to arrest and control this ever-widening power of corporations. And can one wish away the degree of sickness in private sector companies? To the extent companies develop sickness, in direct proportion the controllers of such companies become healthy. In a welfare State, it is the constitutional obligation of the State to protect socially and economically weaker segments of the society against the exploitation by corporations. We, therefore, see no merit in the submission that the conditions prescribed bear no relevance to the object or the purpose for which the power was conferred under Sec. 58-A on the Central Government."

On the scope of the Court's interference with the decision of the expert bodies, it has held:

" The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its

> power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

As held in **Ganesh Bank** and **Peerless General Finance** the RBI being an expert body and having carefully assessed the affairs of the Bank was satisfied that the Bank was being run in the manner which is prejudicial to the interests of the depositors. From the voluminous material produced before us which was discussed herein above we are fully satisfied that the RBI, after taking into account relevant factors and on an objective assessment of the functioning of the Bank cancelled the licence. We do not find any illegality, irrationality or procedural impropriety in its decision making process.

Sri Srinivas next argued that the RBI indulged in invidious discrimination by singling out the Bank by cancelling its licence where as it refrained from doing so in the case of Charminar Co-operative Bank and Vasavi Co-operative Bank. In our considered opinion this contention is liable to be rejected for two reasons: 1) to invoke the doctrine of equality, it is necessary for the person invoking the doctrine to show that all are similarly situated. The writ petitioners failed to plead the necessary facts such as the NPA position, the outstanding loans, the CRAR position etc., of the other two banks in order to make a comparison between the Bank in question and the other two banks, and 2) even assuming that

the RBI acted in favour of the other two Banks by not cancelling their licence, the petitioners cannot succeed unless they are able to establish that cancellation of licence of the Bank is vitiated by any of the infirmities constituting grounds for setting aside the decision.

In **Union of India and Another Vs. International trading Co. and Another**[12] the Supreme Court held that a person is not entitled to relief by claiming negative equality. It was held that two wrongs do not make one right and that a party cannot claim that since something wrong has been done in another case, a direction should be given for doing another wrong and that in such matters the concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service. This contention of the learned counsel is therefore, rejected.

Having carefully considered the material on record and as discussed above we are satisfied that the RBI after giving repeated opportunities to the Bank to rectify the serious defects in its functioning and having been convinced that the Bank miserably failed in that regard and there was no possibility of its revival, took a conscious decision to cancel the Bank's licence and wind it up. In our view this decision is taken in the best interest of the depositors.

Applying the well settled parameters of judicial review as reflected in the case law discussed hereinabove, we are of the considered view that the decision of the RBI in cancelling the Bank's licence is not liable to be interfered with in exercise of this Court's power under Article 226 of the Constitution of India.

Therefore, we hold that the RBI's action to cancel the licence and for ordering winding up of the bank is perfectly legal and valid being wholly in consonance with the law laid down by the Supreme Court.

Whether winding up of the Bank is in conformity with Law?

The learned single Judge set aside the order passed by the Registrar winding up the Bank mainly for two reasons, namely; that the RBI even before the expiry of time for filing appeal by the aggrieved party against the order of cancellation, required the Registrar to wind up the Bank and that the Registrar failed to issue a show-cause notice to the members of the Bank before winding up. Sri Vedula Srinivas commended the view taken by the learned single Judge and reiterated before us the stand which was found acceptance by the learned single Judge.

Learned Advocate General however contended that when once the bank's licence is cancelled, its winding up is an inevitable consequence. He also submitted that the scheme of the various provisions of different Acts does not envisage notice to be given to any person before winding up a banking society on calcellation of its banking licence, because in the absence of any option whatsoever to the Registrar otherthan winding up, to comply with directions issued by the RBI, giving of such a notice would be an useless formality.

To resolve this contentious issue it is necessary to examine the relevant provisions. By virtue of the provisions of Section 56 of the 1949 Act, the provisions of the said Act are made applicable to the cooperative societies carrying on banking business subject

to the conditions set out in the said provision. The RBI has therefore granted a licence to the Bank under the provisions of Section 22 of the 1949 Act. After being satisfied that the bank failed to comply with the statutory obligations contained in Section 22 (3) and (3A) of the 1949 Act, it has cancelled the banking licence. Cancellation of banking licence is one of the circumstances enumerated under Section 13-D(a)(b) of the 1961 Act which empowers the RBI to require the competent authority to wind up an eligible co-operative bank registered as such under the provisions of the 1961 Act (It is not in dispute that the Bank is registered as an eligible cooperative bank under the provisions of 1961 Act). Section 36-A of the 1995 Act made the provisions of Chapter-XIIIA of the 1964 Act *mutatis mutandis* applicable to all co-operative banks.

Chapter-XIIIA of the 1964 Act which contains two sections, namely, Section 115-A and 115-B deals with eligible co-operative banks. Section 115-A is a 'definition' provision and Section 115-B provides for winding up of an eligible co-operative bank under different circumstances. Clause-(i) of Section 115-B enables the competent authority to wind up an eligible co-operative bank with the previous sanction in-writing of the RBI and Clauses-(ii) and (iii) obligate the competent authority to wind up such bank if so required by the RBI.

From a reading of the provisions of Section 115-B(ii) and (iii) of the 1964 Act it is quite evident that when once the RBI requires the competent authority to wind up the bank, there is no discretion left with the competent authority except to wind up the bank.

Sri Vedula Srinivas however contended that before winding up the society/co-operative bank, it is incumbent upon the Registrar to follow the procedure prescribed by Chapter-IX of the 1964 Act. But we have not felt persuaded to accept this contention for two reasons; 1) Chapter-XIIIA introduced special provisions for winding up of eligible cooperative bank while Chapter-XI deals with winding up of an ordinary society registered under the provisions of the 1964 Act. The circumstances under which these two categories of the societies are would up under these two chapters have no similarities, as could be seen from the provisions of Section 64(2) in the case of ordinary societies and that of Section 115-B in the case of eligible co-operative banks. Evidently conscious of this distinction, the legislature insulated Section 115-B by keeping it under a separate chapter and commencing the said provision with a non-obstanti clause; and 2) as rightly pointed by the learned Advocate General, since the Registrar is not left with any option when once the RBI has directed him to wind up the bank, no useful purpose would be served by issuing a notice before winding up a co-operative bank. We are fortified in this view of ours by a Division Bench judgment of this Court in **Reserve Bank of India Vs. Joint Registrar**[13]**.** It was held therein that Section 115-B(iii) of the 1964 Act does not envisage a prior notice to be issued by the Registrar to the members of the Board of Management before superseding the management on the directions given by the RBI. The distinction drawn by the learned Single Judge between the case decided in the said judgment and the present case on the ground that in the former case only supersession of a managing

committee was involved cannot be legally sustained. Whether it is a case of winding up of a cooperative bank/society or supersession of the board of management, both are governed by common legal parameters.

We find the reasoning of the learned Judge based on the illustration of a Doctor and patient in concluding that winding up of the Bank by the Registrar without prior notice to the aggrieved parties is not sustainable is not supported by any of the relevant statutory provisions and the said illustration in our view cannot be adopted to a situation which is covered by a specific statutory scheme. Unless the RBI's decision of cancelling the banking licence is reversed by the appellate authority (which is not the case here), there was no question of reviving the banking business of the society and in the absence of any statutory requirement for giving a notice, we do not see any illegality in the order passed by the Registrar for winding up of the Bank. In our considered view issuance of notice to any person who was likely to be aggrieved would not have made any difference whatsoever in the ultimate decision making of the Registrar and the same would have been an empty formality.

With respect to the reasoning of the learned single Judge that the RBI acted hastily in directing the Registrar to wind up the Bank even before the expiry of limitation for filing appeal, the same in our view is not based on any legal provision under which the RBI is required to defer initiation of action for winding up of the society following cancellation of the banking licence till the expiry of limitation for filing appeal. The learned Judge in arriving at this conclusion visualized a situation where the appellate authority

allowed the appeal rendering the position of the society after winding up, irreversible. Since the appellate authority (Government of India) dismissed the appeal filed against the RBI's order of cancellation of banking licence on 8.11.2005, this aspect has become academic. In view of the above discussion, we hold that the order of the Registrar dated 7.12.2004 whereby he ordered for the winding up of the Bank does not suffer from any legal infirmity.

The One Time Settlement (OTS) Schemes qua the Bank:

While the periodical inspections of the Bank by the RBI were taking place, as referred to earlier, the Bank was declared sick with effect from 31.3.2002. The Bank's NPA percentage was assessed at 64.40 % as on 31.3.2002. On 12.2.2003, the RBI issued revised guidelines for compromise settlement of chronic NPAs of Primary (Urban) Cooperative Banks. The RBI vide the said proceedings addressed to the Chief Secretaries of all the States, inter alia, decided that NPAs in all sectors irrespective of the nature of business/activity/purpose of advances, which have become doubtful or loss assets as on 31.3.2000 with outstanding balance of Rs.10 crores and below, on the cut of date may be covered under a new scheme of OTS. While enclosing the draft guidelines with the said proceedings, the RBI indicated that the concerned State Governments may modify the draft guidelines in line with the provisions of the Cooperative Societies Act/Rules.

Following the aforementioned draft guidelines issued by the RBI, the Registrar addressed a letter in Rc.No.3484/2002/UB-1 dated 17.3.2003 to the Chief Executive Officer of the Bank to

examine the guidelines and prepare the list of borrowers and NPAs to which the guidelines of OTS can be applied and furnish the same to the RBI with definite proposal for their prior approval for being implemented in the Bank. Meanwhile, the RBI decided to supersede the Board of Directors of the Bank and required the Registrar to make an order of supersession of the Board of Directors and for appointment of an administrator in terms of the provisions of Clause-(iii) of Section 115-B of the 1964 Act and the same was communicated to the Registrar by letter dated 21.3.2003 of the Chief General Manager of the RBI. In compliance with the said directions, the Registrar issued proceedings dated 25.3.2003 whereby he superseded the Board of Directors and appointed an Additional Commissioner (Relief) as Special Officer/Administrator to manage the affairs of the Bank.

The Government of Andhra Pradesh through its Principal Secretary to Government issued memo dated 1.4.2003 wherein it has advised the Registrar to issue necessary instructions to the Cooperative Urban Banks in the State to implement the OTS scheme in the banks if they so desire, strictly in conformity with the RBI guidelines and after obtaining its approval. Consequently, the Registrar addressed letter dated 8.4.2003 to the Administrator of the Bank wherein he was asked to take suitable action to implement OTS scheme as per the RBI guidelines. The Registrar in the said letter also requested the Administrator to form appropriate committees in that regard and include professionals from outside in the said committees to ensure that the scheme is implemented in a fair manner.

The managing committee of the Bank in its meeting held on

12.5.2003, after considering the draft RBI guidelines, approved the OTS scheme, inter alia, providing three options for the borrowers. The committee also resolved that as the Bank has not followed the RBI's guidelines for assets classification as on 31.3.2000, it will propose to the Registrar to re-classify all the borrowers' accounts as on 31.3.2000 to decide the eligibility of the borrowers under the proposed OTS scheme. The implementation monitoring committee on Urban Cooperative Banks held a meeting on 29.5.2003 under the Chairmanship of Principal Secretary to Government and considered the implementation of OTS scheme by the Urban Cooperative Banks including the subject Bank. The minutes of the said meeting disclosed that the Chairman of the Bank agreed to prepare all the details of draft OTS including revival package and the Principal Secretary to Government and Chairman of the committee clarified that the Bank is covered by the provisions of 1995 Act and therefore it need not seek the approval of the Registrar for implementing OTS and other revival packages. Subsequently, the implementation committee in its meeting held on 4.6.2003 accepted the OTS proposal of the Bank. An additional resolution was passed in the managing committee meeting held on 7.7.2003 and finally confirmed the OTS scheme as submitted to the Registrar and ratified all the actions taken by the Bank so far for implementation of the OTS scheme.

In reply to a letter addressed by Sri Pattem Suryaprakash Rao (petitioner in W.P.No.23156 of 2004) the RBI in its letter dated 26.8.2003 informed him that as regards the OTS scheme, as the Government (Registrar) cleared the OTS scheme in respect of the Urban Cooperative Banks, the RBI's role is limited to evolving a

policy structure and advising the State Governments in that regard. The RBI therefore, expressed its inability to redress his grievance. In the managing committee meeting of the Bank held on 17.09.2003 the committee resolved to extend OTS scheme for a further period from 19.9.2003 to 30.9.2003.

The Modified OTS Scheme of 2004:

While continuing to implement the OTS scheme in respect of NPA's as on 31.3.2000, the Managing Committee of the Bank examined the Registrar's proposal putforth vide his letter dated 30.1.2004 for evolving a scheme for compromise settlement of the amounts in respect of NPAs as on 31.12.2003 and prepared a draft scheme for the approval of the Registrar. The said scheme was approved by the Government and communicated the same to the Registrar through its memo No.1901/Coop-III(1)/2004 dated 25.2.2004. The said scheme was questioned by way of an amendment in W.P.M.P.No.2333 of 2005 in W.P.No.23156 of 2004 filed by one of the shareholders of the Bank Sri Pattem Suryaprakash Rao. The learned Single Judge by his order dated 8.2.2005 suspended the operation of said proceedings of the Registrar dated 24.1.2005. The Registrar in turn addressed letter Rc.No.55765/03/UB-V dated 26.2.2004 to the Managing Director of the Bank wherein while informing the Government's approval for the compromise settlement scheme taking the NPAs as on 31.12.2003, he requested the committee of persons in charge to implement the said scheme and send fortnightly progress reports.

In the meantime, the proposals sent by the State Government vide its D.O. letter dated 25.2.2004 for formulating a

scheme for reconstruction of Prudential and Vasavi Cooperative Urban Banks, were turned out down by the RBI for the reasons that the liquidity and solvency position of both the banks continues to be week and was a matter of concern and that in the light of huge accumulated loss, negative net-worth and poor performance towards recovery of hard core NPAs, it was not possible to lift the directions earlier given. The RBI also expressed its inability to approve the reconstruction plan submitted by the State Government for the said two Banks.

The RBI conducted another statutory inspection of the Bank with reference to the latter's position as on 30.6.2004, following which it addressed letter dated 17.8.2004 wherein it is inter alia noted that the solvency position of the Bank was critical and had shown further deterioration after the last inspection. On the basis of the said inspection, the Bank was graded as Grade-IV category.

The RBI after being satisfied that the affairs of the Bank being conducted in the manner detrimental to the interests of the depositors, cancelled the bank's licence on 6.12.2004, after issuing a show-cause notice and considering the explanation filed on behalf of the Bank. On 7.12.2004, the Registrar, wound up the Society and appointed a Liquidator in terms of Section 41(1)(a) of the 1995 Act.

In the order under appeal, the learned Single Judge set aside the modified OTS scheme and the RBI and Registrar filed their respective writ appeals questioning the said order. The Division Bench of this Court which admitted the writ appeals by its

order dated 13.6.2005 suspended the said judgment of the learned Single Judge. The Division Bench also inter alia gave liberty to the official respondents to seek one time settlement in accordance with any scheme prepared by the RBI and that such an agreement (scheme) shall not be finalized without specific permission of this Court.

The OTS scheme of 2005:

Evidently the liquidator through his letter dated 27.9.2005 sent another proposal for approving the OTS scheme to the RBI, which vide its letter dated 10.11.2005 communicated through its Deputy General Manager approved the said scheme with a suggestion to liquidator to seek the permission of this Court as directed in the order dated 13.6.2005 passed in W.A.M.P.No.1976 of 2005 in W.A.No.1053 of 2005. The said proceedings of the RBI were challenged in W.P.No.20607 of 2006. A learned Single Judge of this Court while admitting the said writ petition on 29.9.2006 ordered notice in W.P.M.P.No.26056 of 2006 filed for suspension of the scheme and directed the said writ petition to be posted alongwith W.A.No.1053 of 2005 and Batch.

The OTS Scheme of 2007:

Since the liquidator has not moved this Court for permission to approve the OTS scheme, as approved by the RBI, evidently the said scheme was not brought into force and instead, the liquidator's proposal for a fresh OTS scheme was approved by the Registrar. This Scheme is questioned in W.P.No.737 of 2007 by the depositors' association of the Bank. One of us (CVNR,J) before whom this writ petition came up for admission and

consideration of interim relief, after taking note of the fact that the batch of writ appeals and writ petitions pertaining to the cancellation of licence, winding up and the validity of the previous OTSs was pending before the Division Bench, directed the writ petition to be posted alongwith the Batch of cases before the Division Bench. While so doing it was further directed that till the consideration of the interim applications by the Division Bench, the Liquidator was given liberty to receive the loan amounts under OTS 2007 scheme from the debtors, subject to the condition that he shall not release the securities to the debtors till further orders are passed by the Division Bench.

The learned Single Judge invalidated the modified OTS scheme of 2004 mainly on three grounds, namely; 1) the State Government in exercise of its executive power which is co-extensive with the power of the State Legislature by virtue of Article 162 of the Constitution of India has no power to prepare and implement OTS scheme without RBI's approval since the subject 'banking' is included in entry 45 of List-I of VII schedule; 2) as the appointment of liquidator was held bad under point no.2, the OTS scheme proposed by him could not be sustained; and 3) at any rate, the liquidator as per the directions of the RBI cannot implement the OTS scheme without its permission.

Sri Vedula Srinivas, while seeking to support the above stated reasoning of the learned Single Judge, contended that since the value of secured assets is much morethan the debts to be recovered from the borrowers, there was no justification to introduce OTS scheme at all. Alternatively, he submitted that even if there is need to introduce OTS scheme to ensure quick

recovery of debts, the liquidator failed to seek the approval of the RBI and hurriedly introduced the OTS scheme 2007. He invited our attention to the OTS scheme of 2007, in particular to Clause-(ii) under which it is provided that the borrower can pay simple interest @ 18% from the date of disbursement of loan to 31.3.2000 and after adjusting the repayments already made, crystallized amounts shall be arrived at and from 1.4.2000 till the date of final payment, 12% simple interest shall be paid, and submitted that this clause is contrary to the draft guidelines issued by the RBI. The learned counsel submitted that under the said clause reduction of interest up to 31.3.2000 i.e., the date on which NPAs are classified as doubtful or loss asset is not permissible; that 100% of the outstanding balance as on the date on which the account was categorized as doubtful or loss asset whichever happened earlier shall be recovered and that clause-ii of 2007 scheme is contrary to the said RBI guidelines.

The learned Advocate General while controverting these contentions of the learned counsel submitted that after 6.12.2004, the date on which the RBI passed orders canceling the licence of the Bank and ordered the Bank to be wound up, the subject Bank ceased to be a banking company and it has become a 'defunct' cooperative bank within the meaning of Section 2(ff) of the 1961 Act. He therefore, submitted that the defunct cooperative bank ceased to be under control of the RBI and it is open to the Registrar to exercise control over the defunct cooperative bank under the provisions of 1995 Act read with the 1964 Act. The learned Advocate General and also Sri E.Manoher, learned Senior Counsel contended that as the banking licence was cancelled, its

status having got reduced to that of a cooperative society, the State can exercise its executive power as it has the legislative power over the cooperative societies which fall under Entry-32 of List-II of Schedule-VII.

We have given our thoughtful consideration to the reasons given by the learned Judge and the aforementioned submissions of the learned counsel.

In **Virendra Pal Singh Vs. District Assistant Registrar, Cooperative Societies, Etah**[14] while dealing with the status of U.P. State Co-operative Land Development Bank Limited and the legislative competence of the U.P.State legislature to enact the Act and to frame regulations governing recruitment etc., of the employees of the said Bank, the Supreme Court held as under:

> " We do not think it necessary to refer to the abundance of authority on the question as to how to determine whether a legislation falls under an entry in one list or another entry in another list. Long ago in Prafulla Kumar Mukhtrjee v. Bank of Commerce Ltd. (74 IA 23) the Privy council was confronted with the question whether the Bengal Money-Lenders Act fell within Entry 27 in List II of the Seventh Schedule to the Government of India Act, 1935, which was 'money-lending', in respect of which the provincial legislature was competent to legislate, or whether it fell within Entries 28 and 38 in List I which were 'promissory notes' and 'banking' which were within the competence of the central Legislature. The argument was that the Bengal Money-Lenders Act was beyond the competence of the provincial legislature insofar as it dealt with promissory notes and the business of banking. The Privy Council upheld the vires of the whole of the Act because it dealt, in pith and substance, with money-lending. They observed:
>
> Subjects must still overlap, and where they do, the

question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.

Examining the provisions of the U. P. Cooperative Societies Act in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with "cooperative societies". That it trenches upon banking incidentally does not take it beyond the competence of the State legislature. It is obvious that for the proper financing and effective functioning of cooperative societies there must also be cooperative societies which do banking business to facilitate the working of other cooperative societies. Merely because they do banking business such cooperative societies do not cease to be cooperative societies, when otherwise they are registered under the Cooperative Societies Act and are subject to the duties, liabilities and control of the provisions of the Cooperative Societies Act. We do not think that the question deserves any more consideration and, we, therefore, hold that the U. P. Cooperative Societies Act was within the competence of the State legislature. This was also the view taken in Nagpur District central Cooperative Bank Ltd. v. Divisional Joint Registrar, Cooperative Societies (AIR 1971 Bom 365) and Sant Sadhu Singh v. State of Punjab (AIR 1970 P & H 528). ”

It is therefore evident from the above mentioned judgment that the State legislature is not denuded of its power to legislate on the subject concerning Co-operative Banks and consequently, its executive power being co-extensive with the legislative power can also be exercised.

In so far as the reasoning of the learned Single Judge,

namely, that the lack of State Government's/its officers' power to frame OTS scheme is concerned, he has neither considered the effect of the judgment of the Supreme Court in **Virendrapal Singh** nor the status of the Bank after the order dated 6.12.2004 was passed by the RBI, canceling the banking licence and directing the Registrar to wind up the society. The learned Judge evidently proceeded on the premise that the subject Bank even after cancellation of its licence and the winding up continues to be under the control of the RBI. In our considered view the learned Judge committed a serious error in not taking into consideration the change in the status of the Bank brought about by the cancellation of its licence and its winding up.

While in the case of banking companies the RBI is empowered to initiate proceedings for winding up under Part III of the 1949 Act, in the case of cooperative banks they are specifically excluded from part-III except to the extent of sub-section (1), (2), and (3) of Section 45 by the provisions of Section 56 (zb). A separate scheme by way of special provisions is envisaged under the 1961 Act read with the 1995 Act and the 1964 Act for their winding up. As already referred to in the foregoing, section 36-A of the 1995 Act under which the subject Bank was registered made the provisions of Chapter-XIII A of 1964 Act applicable and the said chapter exclusively deals with the winding up of an eligible cooperative bank. Section 115-B of the 1964 Act envisages winding up of the Bank under the provisions of the said Act if so required by the RBI in the circumstances referred to in Section 13-D of the 1961 Act. It therefore, necessarily follows that the Registrar, who is the authority to wind up, is empowered under

Section 65 of the 1964 Act to appoint a liquidator. The Liquidator, inter alia, is vested with the wide powers under Section 66 of the Act to manage the affairs of the society in the manner prescribed therein till its complete winding up/liquidation. Thus with the passing of the orders by the RBI for winding up of the cooperative banks, they go out of the perview of the 1949 Act to be taken over by the provisions of the 1961 Act, the 1995 Act and the 1964 Act. We are therefore, in disagreement with the finding of the learned Single Judge that the OTS scheme introduced by the liquidator without the prior approval of RBI (with the approval of the Registrar) is beyond the scope of the powers of the State Government and hold that by virtue of the provisions of the 1964 Act the Registrar/Liquidator have the powers to frame scheme to facilitate winding up of the defunct bank.

As regards the contention of Sri V.Srinivas that in the cases of Charminar Co-operative Bank and Vasavi Co-operative Bank, the State Government obtained the sanction from RBI for OTS scheme, as rightly pointed out by the learned Advocate General and Sri E.Manohar and not disputed by Sri V.Srinivas that in the said two cases their licences were not cancelled by the RBI and therefore they continued to be under the control of the RBI.

Coming to the submission of Sri Vedula Srinivas that the liquidator has not obtained the prior approval of the RBI for the 2007 OTS scheme and this OTS scheme is not in consonance with the earlier draft OTS scheme of RBI and that therefore the OTS scheme of 2007 cannot be sustained, in our considered view, this plea is liable to be rejected for two reasons. Firstly, in view of our finding that the subject cooperative bank was not under the

control of the RBI with effect from 06.12.2004, when its banking licence was cancelled, and with the appointment of the liquidator for the purpose of winding up of the bank, it was not incumbent upon him to take the prior approval of the RBI. Secondly, as referred to hereinbefore, by its letter dated 26.08.2003 addressed to Sri Pattem Suryaprakash Rao (petitioner in Writ Petition No.23156 of 2004) the RBI's role in framing of OTS is limited to evolving the policy structure and advising the State Government in that regard. In this context, it is worthwhile to notice that when the said letter was addressed by the RBI, the bank's licence was still intact and the former had complete statutory control over the bank. With the cancellation of the bank's licence, the RBI cannot be expected to play even that limited role in framing and implementation of the OTS schemes by the competent authorities.

In the counter filed on behalf of the RBI in Writ Petition No.20607 of 2006, it is averred that there is no legal requirement that any remission or compromise in respect of loans and advances need prior approval of the RBI except in the case of loans covered by Section 20-A read with Section 56 of the 1955 Act (the debts payable by the Directors/Companies in which they have interest). A reference, however, was made to Section 36 of the said Act under which *inter alia* the RBI is empowered to caution or prohibit the banking companies, in particular, against entering into any particular transaction or class of transactions and also generally to give advice to any banking company. This is evidently the reason for the RBI to take the consistent stand that its role in framing and implementation of OTS schemes by individual banking companies is limited. The RBI also in its

counter-affidavit referred to Section 45-W of the 1949 Act, which excluded the application of provisions of Part-II to the banking companies, which are being wound up. It therefore appears to us that except in cases covered by the provisions of Section 20-A read with Section 56 and where the RBI exercised its powers under Section 36 read with Section 56 of the 1949 Act, it is not obligatory on the part of the cooperative banks concerned to seek the approval of the RBI before implementation of the OTS schemes.

In view of Section 45-W, even the limited power of control exercised by the RBI in the matter of settlements/compromises over the banking companies is not available over the banking companies, which are being wound up. Therefore, even assuming that some of the terms of the OTS scheme are not strictly in consonance with the draft RBI guidelines, they cannot be invalidated merely on that ground.

The learned counsel could not further demonstrate before us as to how clause (ii), which permits reduction of interest to 18% simple against the contracted rate of interest from the date of disbursement of loan instead of recovering the loan at the contracted rate of interest up to 31.03.2000 i.e., the date on which the NPAs are classified as doubtful or loss asset, is *per se* bad warranting our interference while exercising our power of judicial review. It is needless to emphasize that this Court does not possess the expertise in financial matters to judge whether a particular condition in the settlement scheme is in the interest of the institution/its creditors or not. Unless the decision of the public authority is shown to be demonstrably arbitrary, irrational or

malafide, the Courts would not examine the reasonableness or otherwise of the terms of such scheme and substitute its opinion to that of the decision of the experts in the field. The only allegation made while assailing the introduction of OTS schemes was that the scheme is intended to help the big borrowers. This plea is not substantiated by producing necessary material, in the absence of which, we are not impressed by this submission of the learned counsel. Moreover, from the letters addressed by the RBI from time to time following its statutory inspections, reference to which was already made in the foregoing, we are wholly satisfied that though the bank is holding securities to cover the debts, substantial part of the loans has become unrealizable in view of the poor "asset quality" throwing the realisability of property mortgaged to the bank in doubt (letter dated 13.11.2003 of the Deputy General Manager, RBI, referred to supra). Even the writ petitioners admitted that as at present the bank is not in a position to repay the debts to its depositors. We do not therefore see any illegality in the introduction of OTS scheme, which is evidently done with a view to make a quick recovery of the loans to pay off the debts to its staggering number of about 1,31,000 depositors of whom 1,23,000 depositors, as given out by the learned Advocate General, are small depositors, each having deposits of Rs.1,00,000/- or below. Since the interest of the depositors is of paramount consideration, while examining the validity or otherwise of the OTS scheme, we have called for the details of the number of depositors, the amounts already repaid to them and the outstanding amounts. We are satisfied with the statement of the learned Advocate General that by implementing the OTS scheme, the depositors are neither denied any part of the principal amounts

nor scale of interest payable to them is in any way reduced. He gave out that the liquidator was able to repay the amount of Rs.217 crores to the small depositors numbering 1,23,000 holding the deposit amounts of maximum of Rs.1,00,000/- towards principal and from out of the sum of Rs.250 crores expected to be recovered under OTS scheme, they will be paid the contract rate of interest till the date of payment, in addition to settling the entire dues of the left over depositors numbering 8200. As already noted, he also stated that the balance of Rs.75 crores will be paid to the Deposit Insurance and Credit Guarantee Corporation towards repayment of its loan. We are therefore of the considered view that any interference with the OTS scheme introduced by the liquidator, instead of furthering the interest of the depositors, would be likely to cause harm to their interest.

In the aforementioned legal and factual scenario, we hold that the OTS schemes, which were implemented in the past and the one, which is introduced in the year 2007 do not call for interference by this Court.

In the result, the impugned order of the learned Single Judge is set aside and Writ Appeal Nos.1053 of 2005, 1072 of 2005, 1086 of 2005, 1095 of 2005, 1165 of 2005, 1213 of 2005, and 1227 of 2005 are allowed.

Writ Appeal No.1116 of 2005 is dismissed. W.A.(SR) No.103185 of 2006, W.P.M.P.No.30259 of 2005 in Writ Petition No.6214 of 2005, Writ Petition No.6214 of 2005, Writ Petition No.20607 of 2006, Writ Petition Nos.18180 and 18553 of 2006 and Writ Petition No.5329 of 2007 are dismissed as infructuous. Writ Petition No.737 of 2007 is also dismissed.

As a sequel to disposal of the main cases all the

W.A.M.Ps., and W.P.M.Ps., filed in the respective main cases and which are pending are disposed of as infructuous.

C.V.NNAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Dated: 10th October, 2007
Mdaa

L.R. Copy to be marked.

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[1] AIR 1962 SC 1371
[2])1992) 2 SCC 343
[3] AIR 1958 SC 398
[4] AIR 1989 SC 997
[5] (1994) 6 SCC 651
[6] (1997) 7 SCC 463
[7] (1999) 1 SCC 759
[8] (2003) 9 SCC 592
[9] (2004) 11 SCC 213
[10] (2006) 8 SCC 200
[11] 2006 (8) Scale 588
[12] (2003) 5 SCC 437
[13] 2004 (6) ALD 699
[14] (1980) 4 SCC 109